# Office of Chief Counsel Internal Revenue Service

## memorandum

CC: NER: MAN: TL-N-6291-99

DTonuzi

date:

to: Chief, Examination Division, Manhattan District

Attn: Jim Butler

from: District Counsel, Manhattan District, New York

subject:

EIN:

Tax Year:

Statute of Limitations Expires:

DISCLOSURE STATEMENT

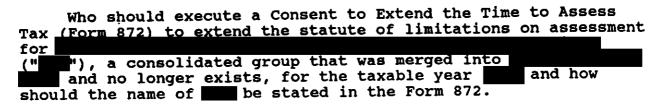
This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

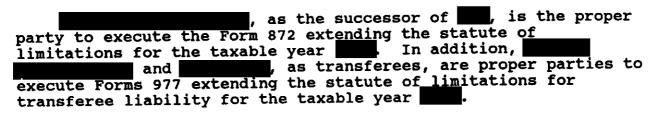
This is in response to your request for advice concerning the issue of who is the proper party to sign the Form 872 for

common parent of a consolidated group, for the tax year
This advise supplements our prior advice dated July 22, 1997, a
copy of which is attached. We have coordinated this issue with
Ken Casey of the Procedural Litigation Branch of Field Service.
This advise is subject to the 10-day post review procedure.
Therefore, no action should be taken based on this advice until
the National Office has had the prescribed 10-day period to
review and approve the advice.

#### Issue



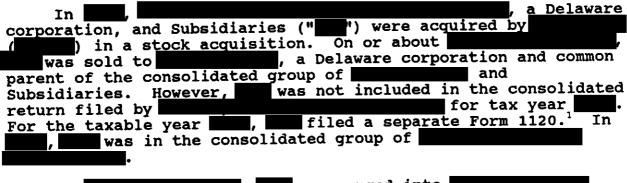
#### Conclusion



#### Facts

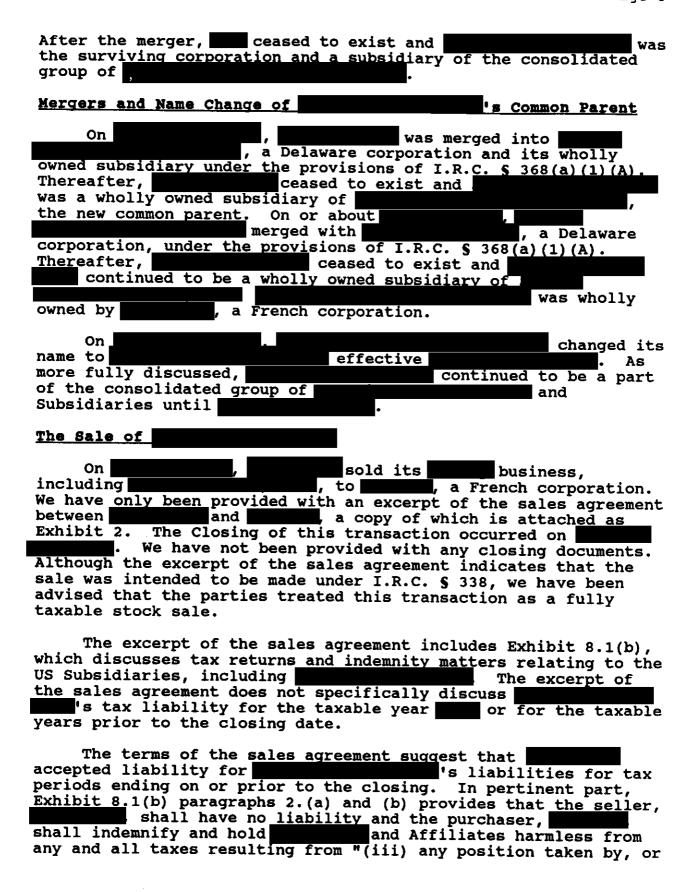
We base our opinion on the limited facts provided that are set forth in our earlier attached memorandum dated July 22, 1997, marked as Exhibit 1, and the additional facts more recently provided, as set forth below. If any of the below listed facts are inaccurate or incomplete, please so notify Drita Tonuzi or our office immediately.

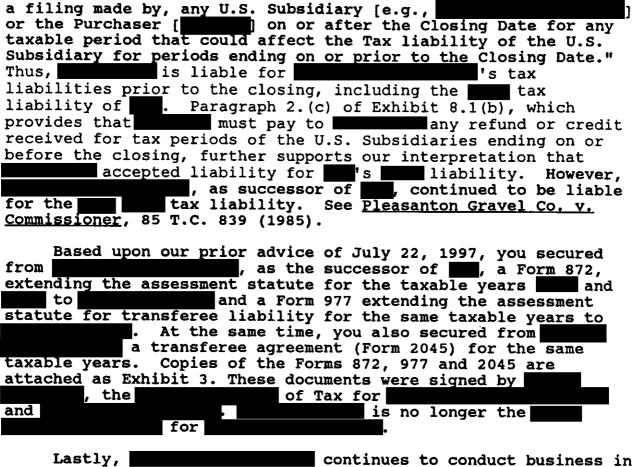
### Merger of into



On was merged into , a New York corporation and a wholly owned subsidiary of under the provisions of I.R.C. § 368(a)(1)(A).

Under Treasury Regulation 1.1502-76(a)(5), in effect during the taxable year if a corporation became a member of a consolidated group within the last 30 days of a taxable year, it had the option of not being included in the consolidated group for such taxable year. For this reason, was not included in 's consolidated return for the taxable year.





Lastly, continues to conduct business in the United States and to maintain an office at the same New York location as it did prior to the closing date. Therefore, it appears a consent to extend the statute of limitations may be easily obtained from

#### Analysis

Under I.R.C. § 6501(c)(4), the usual 3-year statute of limitations on assessment may be extended by a written agreement of the parties. Such an extension of the statute of limitations on assessment is effected through the execution of a Consent to Extend the Time to Assess Tax (Form 872). Rev. Proc. 82-6, 1982-1 C.B. 409; Rev. Proc. 72-38, 1972-2 C.B. 813; Rev. Proc. 69-8, 1969-1 C.B. 399.

The regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents. Under Revenue Procedure 83-41, 1983-1 C.B. 349, the Service generally applies the same rules applicable to the execution of returns, i.e., I.R.C. § 6062, to consents to extend the assessment statute of limitations. Revenue Procedure 83-41 provides that in the case of a corporation, the consent may be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other

officer duly authorized to act. Any such officer may sign a consent even if such person did not sign the return. <u>Id</u>.

Revenue Procedure 83-41 further provides that no one may sign a consent for the corporation where a corporation's existence is terminated. In states where directors are authorized to act for a dissolved corporation, any one or more of the directors may sign the consent for the corporation. Rev. Proc. 84-165, 1984-2 C.B. 305. However, shareholders liable under I.R.C. § 6901 as transferees may sign consents for their own liabilities. <u>Id</u>.

Thus, based on the facts presented, is the proper party to execute a Form 872, as the successor of for the taxable year Pleasanton Gravel Co., 85 T.C. 839 (1985). Moreover, is also secondarily liable for tax liability as a transferee. Therefore, is a proper party to execute both Form 872 and Form 977 for the taxable year

The Form 872 should read as follows: (Top of the Form 872)

"

(EIN) as successor in interest to

(EIN)\*." We recommend
that on the front of the Form 872 the asterisk should refer to
the following: "\* This is with respect to the tax liability of

(EIN) for
the taxable year

"In addition, the signature block on page
2 of the Form 872 should be signed as follows: "

"As successor in interest to

"The block should be signed by a
current officer of

"As to the Form 977, you
may use the same language that you previously used.

In addition. The last accepted liability for the tax liabilities of the closing on the closing of the closing of the closing of the closing of the closing on the closing of the closing o

#### General Matters

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use

Temporary Regulation § 1.1502-77T, which applies to consents in the case of a consolidated group, does not apply in this case because was not part of the consolidated group for the taxable year that the filed a separate return.

of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that § 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the statute extension. Alternatively, you may advise the taxpayer orally or in some other written form of the provisions of I.R.C. § 6501(c)(4)(B). In any event, you should document your actions in this regard in the case file.

We again remind you that this advice is subject to review by the National Office. As discussed on page one, we will contact you within two weeks of the date of this memorandum to discuss any comments the National Office may have regarding this advice. If you have any further questions, please contact Attorney Drita Tonuzi (212) 264-5473, extension 244.

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